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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

EDMOND ESTUDILLO,

Defendant and Appellant.

B211479

(Los Angeles County Super. Ct.  
No. LA055134)

APPEAL from a judgment of the Superior Court of Los Angeles County, Richard H. Kirschner, Judge. Affirmed as modified.

Lea Rappaport Geller, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Linda C. Johnson and Susan D. Martynec, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant and appellant Edmond Estudillo was convicted by jury of attempted robbery, in violation of Penal Code sections 664 and 211,<sup>1</sup> and attempted carjacking, in violation of sections 664 and 215, subdivision (a). Defendant admitted suffering three prior convictions within the meaning of the three strikes law (§§ 1170.12, subds. (a)-(d), 667, subds. (b)-(i)), three serious or violent felony convictions (§ 667, subd. (a)),<sup>2</sup> and serving two prior prison terms (§ 667.5, subd. (b)). The trial court struck two of the prior convictions under the three strikes law. Defendant was sentenced to consecutive terms totaling 16 years 4 months, consisting of 9 years in state prison for attempted carjacking, 16 months for attempted robbery, 5 years for the serious felony conviction, and one year for the prior prison term.<sup>3</sup>

In this timely appeal, defendant argues the trial court erred by not staying the attempted robbery conviction pursuant to section 654. He also points out the abstract of judgment contains an error in the allocation of time for the recidivist allegations, although the total sentence reflected is accurate. We order the abstract corrected and in all other respects affirm the judgment.

## FACTS

Nicole Brandon walked out of her Pilates studio in Valley Village with Kevin Morland at 12:30 a.m. on March 8, 2007. Brandon's car was parked on the street, immediately behind Morland's vehicle. Defendant approached Morland from across the street and demanded, "Give me fucking five bucks." Defendant threw a cup of soda on Morland and Morland's car. Morland entered his car, trying to ignore defendant. Morland waited at the location for

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<sup>1</sup> All references are to the Penal Code unless otherwise indicated.

<sup>2</sup> The three prior serious violent or felony convictions were tried in one action and thus constituted only one section 667, subdivision (a), five-year prior conviction.

<sup>3</sup> One of the prior prison terms was also the subject of the serious felony conviction, and the trial court properly imposed only the five-year enhancement on the serious felony.

Brandon to leave, as he did not want to leave her there in defendant's presence. His car doors locked automatically.

Defendant tried unsuccessfully to open Morland's door. He punched the car and shattered the driver's window. Defendant told Morland to give him all his money. He also said he was going to take Morland's car. Defendant punched Morland in the face with closed fists. Defendant reached into the vehicle and tried to take the keys. Morland put his hand on the keys to prevent defendant from grabbing the keys and taking the car. Defendant repeatedly demanded the keys to Morland's car.

Defendant ripped out the windshield wiper control and tossed it inside the car. He said, "I'm going to kill her." Defendant took a couple of steps toward Brandon's car. Morland started to get out of his car, but defendant pushed him back into the car and slammed the door.

Brandon saw defendant break Morland's window and defendant punch Morland in the face. She called 9-1-1 to report the incident. Brandon decided to drive next to defendant in an attempt to get defendant away from Morland. As she passed by, defendant hit her car with his hands and feet and cursed at her. Brandon drove past defendant, made a U-turn in a parking lot, and drove back toward defendant into oncoming traffic on the wrong side of the street. Defendant jumped to the curb, put his shirt over his head "and just started running like a crazy man down the street." Brandon saw that Morland was covered with blood, his eye was swollen shut, the car ignition had been pulled out, and there was shattered glass everywhere.

Defendant testified that he asked Morland for "a few bucks" to help him out because he needed money for food and transportation. Defendant was not on his medication that night. Morland said he did not have the money to give defendant. Morland's window shattered accidentally when Morland attempted to raise the window while defendant had his hand inside the car.

According to defendant, Brandon tried to hit him with her car. He said she was trying to kill him. Defendant admitted pushing Morland back into his car when he tried to exit. Brandon turned her car around and again drove in defendant's direction. Defendant was not trying to forcibly take money or the car from Morland. He did not punch Morland in the face, but

Morland might have been cut from the broken glass. He did not reach in to tear off the windshield wiper control, nor did he try to take the keys.

## **DISCUSSION**

### **I**

#### **THE TRIAL COURT WAS NOT REQUIRED TO STAY THE ATTEMPTED ROBBERY SENTENCE UNDER SECTION 654**

Defendant argues the trial court should have stayed the sentence on the attempted robbery charge pursuant to section 654, as that charge and the attempted carjacking were part of an indivisible transaction.

Section 654 provides in pertinent part: “(a) An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision. An acquittal or conviction and sentence under any one bars a prosecution for the same act or omission under any other.”

“Case law has expanded the meaning of section 654 to apply to more than one criminal act when there was a course of conduct that violates more than one statute but nevertheless constitutes an indivisible transaction. (*People v. Latimer* (1993) 5 Cal.4th 1203, 1211.)” (*People v. Hairston* (2009) 174 Cal.App.4th 231, 240.) “Section 654 precludes multiple punishment for a single act or indivisible course of conduct punishable under more than one criminal statute. Whether a course of conduct is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the “intent and objective” of the actor. (*Neal v. State of California* [(1960) 55 Cal.2d 11, 19].) If all of the offenses are incident to one objective, the court may punish the defendant for any one of the offenses, but not more than one. (*People v. Perez* (1979) 23 Cal.3d 545, 551.) If, however, the defendant had multiple or simultaneous objectives, independent of and not merely incidental to each other, the defendant may be punished for each violation committed in pursuit of each objective even though the violations share common acts or were parts of an otherwise indivisible course of conduct.

(*People v. Beamon* (1973) 8 Cal.3d 625, 639.)’ (*People v. Cleveland* (2001) 87 Cal.App.4th 263, 267–268.)” (*People v. Hairston, supra*, 174 Cal.App.4th at p. 240.)

Cases finding separate, although simultaneous, objectives have tempered the application of section 654, as noted in *People v. Latimer, supra*, 5 Cal.4th at page 1212 and cases cited therein. (See *People v. Coleman* (1989) 48 Cal.3d 112, 162 [separate intent found for assault and robbery]; *People v. Nguyen* (1988) 204 Cal.App.3d 181, 189-193 [injury to robbery victim was based on an intent separate from the robbery]; *People v. Booth* (1988) 201 Cal.App.3d 1499, 1502 [defendant’s intent to steal and rape at time of entry to victims’ residences warranted separate punishment for sexual offenses and burglary]; *People v. Porter* (1987) 194 Cal.App.3d 34, 37-39 [robbery and kidnapping a victim for the purpose of a later robbery had separate objectives].)

““The determination of whether there was more than one objective is a factual determination, which will not be reversed on appeal unless unsupported by the evidence presented at trial. [Citation.] The factual finding that there was more than one objective must be supported by substantial evidence. [Citation.]’ (*People v. Saffle* (1992) 4 Cal.App.4th 434, 438.)” (*People v. Hairston, supra*, 174 Cal.App.4th at p. 240.)

Substantial evidence supports the trial court’s implied finding that defendant harbored separate objectives in committing the attempted robbery and attempted carjacking. Defendant initially approached Morland, demanding \$5. His intent to rob Morland of money was fixed at the point of this demand. Morland refused defendant’s demand, entered his car, and locked the doors. At this point, defendant changed objectives. Instead of merely seeking a small amount of cash, defendant assaulted Morland, announced his intent to take the car, and repeatedly tried to gain possession of the keys. Given defendant’s multiple objectives—initially to rob Morland of cash and later to carjack Morland’s vehicle—the trial court did not err by failing to stay the sentence on the attempted robbery charge pursuant to section 654.

## **II**

### **CORRECTION OF THE ABSTRACT OF JUDGMENT**

Defendant points out that the abstract of judgment is correct in terms of the number of years imposed, but incorrect as to the allocation among enhancements. The abstract reflects six enhancements for prior prison terms, each for one year, pursuant to section 667.5, subdivision (b). In fact, the recidivist enhancements should be reflected in the abstract of judgment as five years for one serious or violent felony under section 667, subdivision (a), and one year for a single prior prison term. We order the abstract corrected to conform to the oral pronouncement of judgment.

### **DISPOSITION**

The abstract of judgment is ordered corrected as to the enhancements to reflect the imposition of a five year term pursuant to Penal Code section 667, subdivision (a), and a one year term pursuant to Penal Code section 667.5, subdivision (b). No other Penal Code section 667.5, subdivision (b), enhancements are to be reflected in the abstract of judgment. A copy of the corrected abstract of judgment shall be sent to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

KRIEGLER, J.

We concur:

TURNER, P. J.

MOSK, J.